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March 21, 1997

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reply Comments of SJL Communications, Inc. in the Further Notice of Proposed Rulemaking, MM Docket No. 94-150, and the Second Further Notice of Proposed Rulemaking, MM Docket No. 91-221

Dear Mr. Caton:

Enclosed on behalf of SJL Communications, Inc. are an original plus eleven copies of Reply Comments related to the Commission's Further Notice of Proposed Rulemaking, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Systems, MM Docket No. 94-150, FCC 96-436 (rel. Nov. 7, 1996), and the Second Further Notice of Proposed Rulemaking, Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, FCC 96-438 (rel. Nov. 7, 1996). Eleven copies are furnished, pursuant to 47 C.F.R. § 1.419, (a) to ensure that each Commissioner receives a personal copy, and (b) because identical reply comments are filed in each docketed rulemaking.

No. of Copies rec'd 0+11
List ABCDE

Please do not hesitate to contact the undersigned should you have questions concerning this matter.

Very truly yours,

Mark D. Spoto

Mark D. Spoto
of LATHAM & WATKINS

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of		
	)	
Review of the Commission's	)	MM Docket No. 94-150
Regulations Governing Attribution	)	
of Broadcast and Cable/MDS Interests	)	
	)	
In the Matter of		
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	
	)	

To: The Commission

REPLY COMMENTS OF SJL COMMUNICATIONS, INC.

SJL Communications, Inc. ("SJL"), by counsel, submits these reply comments in the Commission's Further Notice of Proposed Rulemaking, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Systems, MM Docket No. 94-150, FCC 96-436 (rel. Nov. 7, 1996) (the "Attribution Rulemaking") and the Second Further Notice of Proposed Rulemaking, Review of the Commission's Regulations Governing Television Broadcasting, MM Docket 91-221, FCC 96-438 (rel. Nov. 7, 1996) (the "Ownership Rulemaking") (the Attribution Rulemaking and the Ownership Rulemaking are referred to collectively as the "Proposed Rulemakings"). On February 7, 1997, SJL filed comments in the Proposed Rulemakings (the "SJL Comments").

The clear majority of comments submitted in the Proposed Rulemakings support the position recommended by SJL: that the Commission should relax its local television ownership rules and allow television duopolies (in varying circumstances).[1] SJL submits this

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1 Recommendations allowing UHF/UHF and UHF/VHF combinations were made in the following: (a) Comments of the National Association of Broadcasters in the Ownership Rulemaking, at 4-16 (subject to limited exceptions); (b) Comments of ABC, Inc. in the Ownership Rulemaking, at 5-8 (subject to certain limitations); (c) Comments of the Local Station Ownership Coalition in the Ownership Rulemaking, at 71-77 (subject to certain limitations); (d) Comments of National Broadcasting Company, Inc. in the Ownership Rulemaking, at 13-14 (subject to certain limitations); (e) Comments of AK Media Group, Inc. in the Proposed Rulemakings, at 10-19; (f) Comments of Sullivan Broadcasting Company, Inc. in the Ownership Rulemaking, at 2-4; (g) Comments of Pappas Stations Partnership in the Ownership Rulemaking, at 6-9; (h) Comments of Max Media Properties LLC in the Ownership Rulemaking, at 3-7; (i) Comments of Shockley Communications Corporation, at 3-4; (j) Comments of HSN, Inc. in the Proposed Rulemakings, at 9-12 (allow UHF/UHF and UHF/VHF combinations in the top 100 markets); (k) Comments of Association of Local Television Stations in the Ownership Rulemaking, at 24-29; (l) Consolidated Comments of Sinclair Broadcast Group, Inc. in the Ownership Rulemaking, at 10-12 (allow ownership of up to 50% of the television stations assigned to a DMA provided that only one station is VHF); (m) Comments of Granite Broadcasting Corporation in the Ownership Rulemaking, at 2-7; and (n) Comments of Telemundo Group, Inc. in the Ownership Rulemaking, at 7-10 (allow UHF/UHF and UHF/VHF combinations, and allow VHF/VHF combinations in certain situations).

Recommendations allowing UHF/UHF combinations were made in the following: (a) Comments of Waterman Broadcasting Corporation in the Proposed Rulemakings, at 2; (b) Comments of Malrite Communications Group, Inc. in the Ownership Rulemaking, at 5-6; (c) Comments of Blade Communications, Inc. in the Ownership Rulemaking, at 19-22; and (d) Comments of Glenwood Communications Corporation in the Ownership Rulemaking, at 5-6 (allow UHF/UHF combinations in markets smaller than the top 10).

brief reply to certain other comments filed in the Proposed Rulemakings. Based on SJL's actual experiences owning one station and providing programming and sales services to another station in Erie, Pennsylvania, it is clear that the Commission should modify its rules regarding television ownership to permit television duopolies, subject to the limitations described in the SJL Comments.

SUMMARY OF SJL COMMENTS

SJL is the owner of WICU-TV, Erie, Pennsylvania, and provides programming and sales services to WFXP(TV), Erie Pennsylvania, pursuant to a time brokerage agreement (a "TBA") with the licensee of that station. WICU is affiliated with NBC and is a VHF channel; WFXP is affiliated with the Fox network and is a UHF channel. The Erie market also has two other local network - affiliated stations -- WJET-TV(ABC) and WSEE-TV(CBS) -- each of which is a UHF channel. In its comments, based on experience and data presented therein, SJL recommended that the Commission attribute television TBAs as ownership and, concurrently, relax its television local ownership rules in a manner that would expressly permit common ownership of two television stations in a local market, subject to limitations based only on market share and similar antitrust-based principles. SJL also proposed that, should it be necessary to grandfather currently-existing TBAs, any grandfathering should be done on a permanent basis, rather than for any specific time period.

REPLY COMMENTS

A few commenters in the Proposed Rulemakings suggest that the Commission should not allow common ownership of two stations in one local market, reasoning that to do so might threaten diversity.[2] However, not a single one of these commenters presents empirical or other market data that supports its contention. In fact, as SJL has demonstrated in Erie, allowing a single operator to own one station and TBA another station in the same market provides a mechanism for threatened stations to stay on the air and provide substantial services. In many cases, including WFXP in Erie, these stations cannot provide meaningful programming services to their community when owned and operated independently, and many would simply fail and go off the air. Despite the rhetorical support voiced in these comments for "diversity of voices," a silent station has no "voice," and presents no viewpoints at all.

Media Access Project, et al., suggests that the Commission should allow failing stations to simply fail, and then redistribute those stations to new (perhaps minority, female or other independent) owners.[3] Constitutional considerations aside, there is little logic to presume that new owners (whether minority, female, both or neither) would by necessity be able to make profitable stations which have historically failed as stand-alone operations. In tomorrow's multi-channel, digital, highly competitive landscape, the prospect for marginal stand-alone stations is even dimmer. Indeed, encouraging stations to fail, when other viable solutions are already in place, is not in the public interest. The Commission has no principled guidelines to apply for the redistribution of any of these licenses. There are no comparative hearing guidelines, and any attempt to allow the public to apply for available licenses would be hopelessly tied up for years.

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2 See, e.g., Comments of The Jet Broadcasting Co., Inc. in the Attribution Rulemaking, at 3 (the "Jet Attribution Comments"); Comments of BET Holdings, Inc. in the Attribution Rulemaking, at 4-5 (the "BET Comments"); Comments of Media Access Project, et al., in the Ownership Rulemaking, at 14 (the "MAP Ownership Comments"); Comments of Press Broadcasting in the Attribution Rulemaking, at 2-3 (the "Press Comments"); Comments of Post-Newsweek Stations, Inc. in the Attribution Rulemaking, at 2-3 (the "PNS Comments").

3 See MAP Ownership Comments at 17-18.

As a result, any stations that the Commission might allow to fail will likely not come back on the air for many years. It is inconceivable that such a result is in the public interest. As SJL has demonstrated with specific, concrete data, its provision of programming and sales services to WFXP has allowed WFXP to provide significant, meaningful services to the Erie public and to improve services to be offered by WFXP in the immediate future.

In its comments, SJL demonstrated that, in many instances, historical distinctions between VHF and UHF stations no longer make sense, and in markets such as Erie, UHF and VHF stations are completely competitive. As demonstrated in Exhibit 1, according to the most recent Nielsen ratings for the Erie market, the two UHF network-affiliated stations in Erie remain in competitive equipoise with WICU in Erie.[4] With the exception of one commenter,[5] SJL can find no specific opposition to its proposal to allow VHF-UHF combinations, subject to certain market-based limitations. The PNS Comments suggest that allowing a VHF/UHF exception to the duopoly rule would "be equivalent to allowing virtually any two stations in the same market to be jointly owned."[6] However, the market-based limitations that SJL recommended as a check on dual ownership would satisfy competition and market power concerns such as those voiced by PNS. With the application of traditional antitrust principles, guidelines will be quickly developed by the Department of Justice to ensure that there is not undue market concentration.

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4 One of the UHF stations in Erie, WJET-TV is owned by The Jet Broadcasting Co., Inc. ("Jet"). In its comments in the Ownership Rulemaking, Jet alleges that the "'joint' operations of Stations WICU-TV and WFXP(TV) has been to the severe detriment of WJET-TV and WSEE-TV, the remaining television stations in Erie." Comments of The Jet Broadcasting Co., Inc. in the Ownership Rulemaking, at 9 (the "Jet Ownership Comments"). Importantly, Jet presents no specific facts to supports its disingenuous contention. In fact, it cannot; as thoroughly described in the SJL Comments -- and reiterated in Exhibit 1 -- WJET-TV and WSEE-TV both enjoy superior or equal competitive positions as against WICU-TV in Erie. See SJL Comments at 3-4, 14. The Jet's baseless allegations should be ignored by the Commission.

5 See PNS Comments at 4-5.

6 Id. at 5.

Placing responsibility for market concentration issues with the Department of Justice is where it properly belongs, and where Congress intended it to be; artificial distinctions based merely on spectrum location simply make no sense today and will be less logical in tomorrow's digital environment.

Certain commenters suggest that the Commission should not take example from its recent experience in the radio industry because television is somehow not like radio.[7] For instance, the Centennial Comments state that, in the Norfolk, Virginia market, there are 35 commercial radio stations, but only 7 commercial television stations.[8] As a result, according to these comments, allowing dual television ownership could have a more drastic effect on diversity than the consolidation taking place in radio. This ignores, of course, the commensurate limits on multiple ownership: in Norfolk, a single operator could own six radio stations (assuming there are 35 stations in the market) under current law; the proposal for television is limited to only two. Moreover, these comments ignore the realities of cable carriage and other multichannel distribution services today. Cable and other multichannel distribution services offer numerous stations and viewing alternatives to the community they serve; in many cases, these services carry significantly greater numbers of television channels than there are radio stations in that market. With the significant cable penetration rates nationwide, the parallel between television and radio is an apt one, and should not be overlooked by the Commission.

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7 See, e.g., Comments of Centennial Communications, Inc. in the Attribution Rulemaking, at 7 (the "Centennial Comments")

8 Id.

Certain commenters suggest that TBAs are not in the public interest because they are akin to a complete transfer of control of the station to a time broker.[9] The common sense response here is not to parse technical distinctions between TBAs and actual ownership; it is to treat TBAs as attributable interests and contemporaneously permit television duopolies.

A few commenters propose that the Commission should either grandfather TBAs for a short period of time, or require immediate divestiture altogether.[10] However, any immediate divestiture, as the Jet Comments and the MAP Comments suggest,[11] would work a dramatic public disservice, as in most cases a licensee would not be equipped to begin immediate programming, and the economic forces which led to the need for the TBAs in the first place would simply return. The result would be the status quo ante, with weak, endangered UHF independent stations incapable of meaningful programming service and, in some cases, on the brink of demise. Allowing grandfathering for any period other than permanently, such as two years as the BET Comments and the Centennial Comments suggest,[12] would not provide a better solution. Should TBAs not be grandfathered permanently, then for any time period that the TBA was grandfathered, a time broker would have no incentive to provide investment into equipment, services and quality programming for the brokered station. As a result, the public would be severely disserved by either of these proposals.

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9 See, e.g., Comments of Media Access Project, et al., in the Attribution Rulemaking (the "MAP Attribution Rulemaking"), at 20-21.

10 See, e.g., Jet Ownership Comments at 12-13; BET Comments at 6-7; MAP Ownership Comments at 30; Centennial Comments at 8.

11 See Jet Ownership Comments at 12; MAP Comments at 30. In a bizarre argument, Jet argues that TBAs should be immediately terminated because they somehow allow for an "effective monopoly in the marketplace of ideas." Jet Ownership Comments at 13. Clearly, the ability to operate two television stations, even in small markets, does not give a person such an effective monopoly. In the current information age, viewpoints are available from every conceivable direction. For a brief description of other, non-television media outlets in Erie, see SJL Comments at 10.

12 See BET Comments at 7; Centennial Comments at 8.

The Centennial Comments cryptically suggest that programming provided to a station pursuant to an TBA would merely duplicate the programming presented on the time broker's owned station in the market.[13] Such a result defies logic. From the perspective of a time broker, a TBA investment pays off through the ability to attract additional, new audiences from the brokered station. A duplication of programming would not attract additional audiences; rather, it would merely divide the audience currently enjoyed by the time broker's owned station with the audience of the brokered station.

SUMMARY

In the Proposed Rulemakings, the Commission requested specific market data so that it could re-evaluate its historical position on television TBAs and the current duopoly rules. SJL has provided the data that the Commission needs. Review of this data clearly demonstrates that the Commission's historical approach to television local ownership is antiquated and should be updated immediately.

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13 Centennial Comments at 5.

Date: March 21, 1997

Respectfully Submitted,

SJL COMMUNICATIONS, INC.

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ERIE, PENNSYLVANIA
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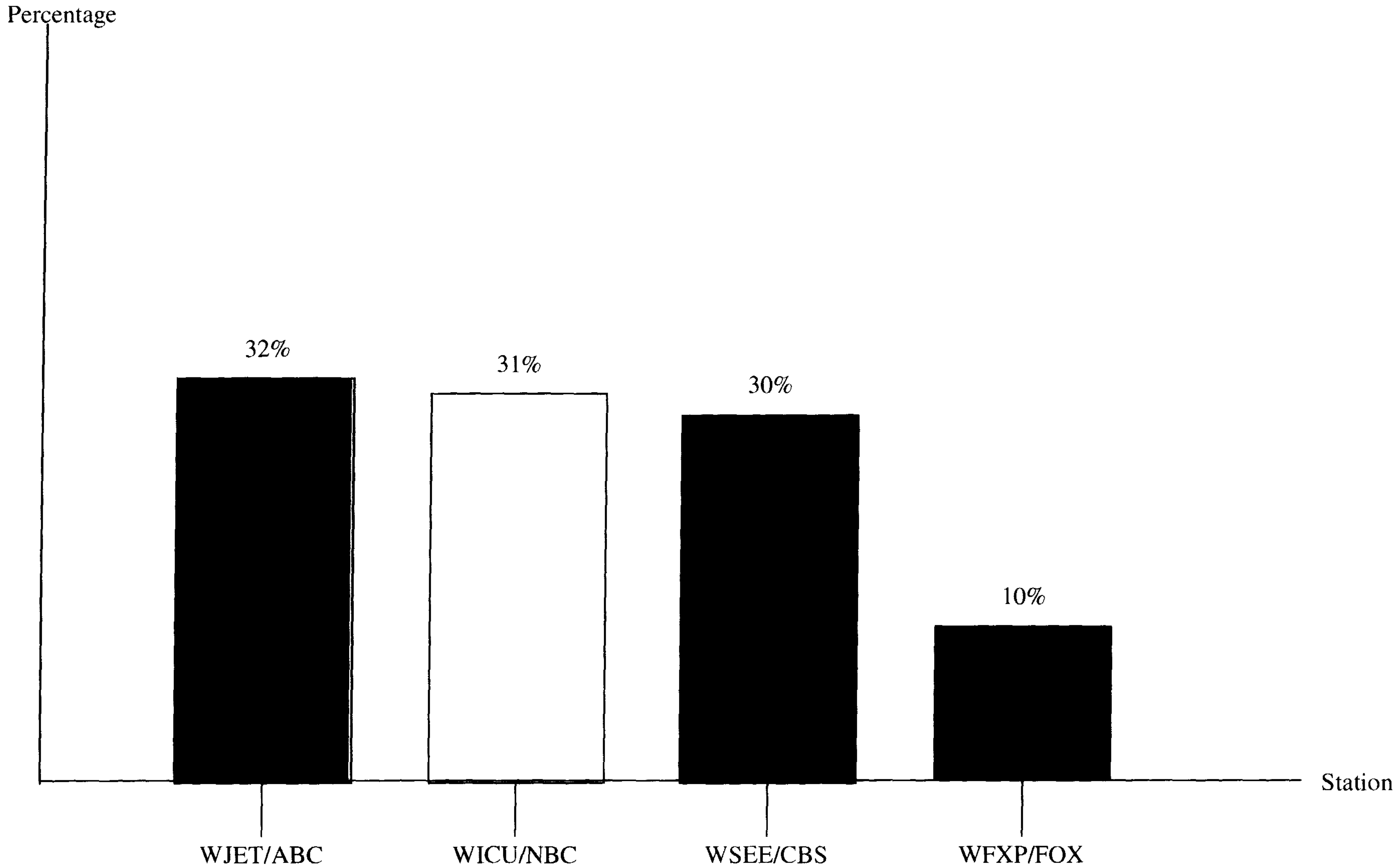

Source: Nielsen's February 1997 Report for Erie, PA
Sunday - Saturday 7:00A-1:00A

EXHIBIT 1